

JAMES Cunningham *V-72323
California Men's Colony State Prison
P.O. Box 8101
San Luis Obispo, CA 93409-8101
IN PRO PER

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JAN -9 2008

UNITED STATES District Court

SOUTH District of CALIFORNIA

JAMES Cunningham Petitioner

V.S.

John Marshall (Warden CMC-E)
Respondent

Motion for stay and ABEYANCE
of Federal HABEAS PETITION
to EXHAUST ADDITIONAL
UNEXHAUST CLAIMS IN THE
STATE COURTS.

RESPONSE TO UNITED STATE
DISTRICT COURT SHOWING CAUSE.

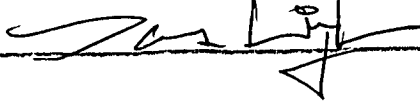
PETITIONER, JAMES CUNNINGHAM, IN PROPER, RESPECTFULLY MOVES
this Honorable Court to show CAUSE of stay of ABEYANCE, while
Petitioner goes back to the State court to Exhaust additional
UNEXhausted claims that were not included in the Petition in wake
of The U.S. Supreme Court recent decision in RHINES V. WEBER (2005)
124 S. Ct. 1528. This Motion is based on the facts and
and Memorandum of authorities stating why the District Court
should grant the Petitioner's stay and abeyance.

MEMORANDUM POINTS AND AUTHORITIES

PETITIONER: would like to EXHAUST these UNEXhausted claim
(SEE, E.G. KELLY V. SMALL, 315 F.3d). Also to AVOID BEYOND A REASONABLE
doubt IN RE WINSHIP (1970) 397 U.S. 358, 90 Sct 1068.

- 1) West's Ann. Cal. Penal Code: 686 Criminal Procedure Preliminary Provisions
- 2) Current through CH. 172 of 2007 Reg. Sess. Urgency Legislation 686.
- 3) Defendant rights: Speedy and Public Trial: Production of witness: Confronting
- 4) Adverse witness: hearsay evidence: deposition.
- 5) In a criminal action the defendant is entitled to: Search Warrants
- 6) 1524 ISSUANCE: grounds: special Master. West's ann. Cal. Health & Safety
- 7) Code: 114884 Petition of forfeiture: Physical seizure of assets:
- 8) Notice of seizure: investigation: Publication: Motion for return of Property:
- 9) Witnesses: for causes challenges. CA CIV. PD 230. CA Jur. 3d Criminal Law:
- 10) Post-Trial Proceedings. 533 Ineffective representation by Defense:
- 11) Counsel: Circumstances Giving Rise to Prejudicial conflict of interests
- 12) between criminal Defendant and Defense Counsel-State cases.
- 13) AM. Jur. 2d Criminal Law 114: Effect of finding of competence to
- 14) stand trial. CA Jur. 3d Criminal Law: Post-trial Proceeding (533) Ineffective
- 15) representation by Defense Counsel. 5th Within CAL. CRIM. L. 3d Criminal
- 16) Trial. 694 Necessity for Present Mental Competence.
- 17) 5th Within Cal. CRIM L. 3d Criminal Trial Test of incompetence.
- 18) People v. Kurbegovic (App. 2 Dist. 1982) 188 CAL. RPT.R. 268, 138 CAL (APP 3D 731)
- 19) A proceeding to determine the question of Present sanity of accused
- 20) not a part of the criminal prosecution but is a special proceeding: Civil
- 21) in character. (EX PARTE.) SEE IN Shaw (App. 1 Dist. 1953) 115 Cal. App. 2d 753
- 22) 252 P. 2d 970. EVIDENCE (Sixth & fourteenth amendments) U.S. CONST: CRAWFORD V.
- 23) Washington (2004) (541 U.S. 36; 541 U.S. 36; Const Art 1, 7.) Bockting V. BAYOR
- 24) 9th Cir. 2005) 399 F. 3d 1010: Nature and grounds of incompetency in
- 25) General: U.S. V. Aboune - BARRERA, 227 F. 3d 959 ca. 9 (Cal. 2001)...
- 26) Respectfully Submitted James Cunningham Petitioner in PD Per!
- 27) DATE: 12-25-07 I, JAMES CUNNINGHAM declare under penalty of perjury
- 28) that the foregoing is true and correct to the best of my knowledge & beliefs.

INTRODUCTION for stay of ABEYANCE

- 1) To The Honorable Court:
- 2) Petitioner is introducing the Court's with Serious Motions for
- 3) Satisfaction. The Court ask Petitioner to show cause for a
- 4) stay of ABEYANCE. Petitioner will stand by these motions
- 5) discovered an executed them for a stay of ABEYANCE.
- 6) Petitioner hope the Court show consideration of these newly
- 7) discover facts. Petitioner and imate Griffin form this cause as
- 8) Pro Pet. Since these newly discovered trial errors are so flour around.
- 9) The Pro Pet's will Place a Master Index the Motions and R.T. EXHIBITS
- 10) will be Place upon this introduction 1,2,3,4,5, to refer too.
- 11) The claims are scattered about the R.T.'s and throughout Trial.
- 12) So the Master Index will be sufficient for finding well needed
- 13) clauses. Soto find the abusive error's of Petitioners in Justice,
- 14) and the highly of relief ensued.
- 15)
- 16) I, James H. Cunningham. declare under Penalty of perjury
- 17) that the foregoing is true and correct to the best of
- 18) MY knowledge & beliefs. Respectfully submitted
- 19) 
- 20)
- 21)
- 22)
- 23)
- 24)
- 25)
- 26)

Sign: Respectfully submitted:

DATE: 12-25-07

Mr. Elliott Griffin DEC 25 2007

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